



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. Box 1450  
ALEXANDRIA, VA 22313-1450  
www.uspto.gov

DLA PIPER RUDNICK GRAY CARY US, LLP  
4365 EXECUTIVE DRIVE  
SUITE 1100  
SAN DIEGO CA 92121-2133

**COPY MAILED**

JUN 01 2005

**OFFICE OF PETITIONS**

Applicant: Epstein et al.  
Appl. No.: 10/618,183  
Filing Date: July 10, 2003  
Title: INJECTION OF BONE MARROW-DERIVED CELLS AND MEDIUM FOR  
ANGIOGENESIS  
Attorney Docket No.: 330142-44  
Pub. No.: US 2004/0131601 A1  
Pub. Date: July 8, 2004

This is in response to the request for a corrected patent application publication under 37 CFR 1.221(b), which was received on May 12, 2005.

The request is DISMISSED.

The instant request is that the patent application publication be republished because the publication contains an error on the front page of the publication, as it improperly lists the assignee as Foundry Networks, Inc. and the assignee is Myocardial Therapeutics, Inc.

The request is dismissed, as an attorney did not sign the paper in compliance with 37 CFR 1.31-1.34 and 37 CFR 10.10. Applicant is reminded that only registered practitioners may practice before the USPTO.

Furthermore, 37 CFR 1.221(b) is applicable "only when the Office makes a material mistake which is apparent from Office records . . . Any request for a corrected publication or revised patent application publication other than provided as provided in paragraph (a) of this section must be filed within two months from the date of the patent application publication. This period is not extendable." A material mistake must affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.<sup>1</sup>

---

<sup>1</sup>Changes to Implement Eighteen-Month Publication of Patent Applications, 65 FR 57023, 57038 (Sept. 20, 2000), 1239 Off. Gaz. Pat. Office Notices 63, 75 (Oct. 10, 2000) (final rule).

The request for corrected publication received on May 12, 2005, would not have been timely filed under 37 CFR 1.221(b). An error in the assignment information would not be a material error.

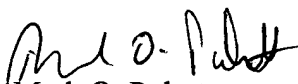
The Office prints the assignee information as reflected on the transmittal letter or application data sheet, if provided by applicant and does not look at the assignment records for the assignment information.

On October 14, 2003, a Filing Receipt was mailed, which improperly listed the assignee as Foundry Networks, Inc. **To avoid this type of problem in the future, applicant's representative should make a request for a Corrected Filing Receipt** by either using the facsimile number (703-746-9195) on the Filing Receipt or mailing in a request.

It has been noted that the declaration submitted by applicant is improper, as it is not properly signed by all of the inventors, as Applicant submitted parts of at least two declarations, but not complete copies. While each inventor need not execute the same oath or declaration, each oath or declaration executed by an inventor must contain a complete listing of all inventors so as to clearly indicate what each inventor believes to the appropriate inventive entity. Applicant must submit complete copies of each declaration signed by the applicants. See MPEP 201.03.

It has been noted that the application data sheet (ADS) submitted with the application does not correctly list the filing date of application 09/868,411 and makes an improper reference to provisional application 60/126,800. Applicant should file a corrected ADS including the assignment information to insure that the patent if issued is correctly printed.

Inquires concerning this communication should be directed to Mark Polutta at (571) 272-7709.

  
Mark O. Polutta

Office of Patent Legal Administration  
Office of the Deputy Commissioner  
for Patent Examination Policy

Enclosure: Corrected Filing Receipt